



COMMONWEALTH OF MASSACHUSETTS
 DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
 BOARD OF REVIEW
 Government Center
 19 Staniford Street
 Boston, MA 02114

11/15/99

Tel. 626-6400
 Office Hours:
 8:45 a.m. to 5:00 p.m.

**DECISION
 OF
 BOARD OF REVIEW**

Allan - Here's a good
 overpayment decision
 from Board. Nancy Rae
 got the court remand
 and Henry
 Sumner did the
 hearing.

Appeal number:

In the matter of:

Best regards,
 Monica

APPELLANT: (claimant)

Office #22

On August 23, 1999, the Boston Municipal Court Division of the District Court Department, remanded this case, Civil Action No. 9901CV-260688 to the Board of Review. On October 15, 1999, in Boston, Massachusetts, the Board reviewed the written record, the transcript and recordings of the testimony and evidence presented at the hearings held on January 5, 1999, and September 22, 1999.

On January 29, 1999, the application of the claimant for review by the Board of Review of the Deputy Director's decision was denied in accordance with the provisions of section 41 of Chapter 151A of the General Laws, the Massachusetts Employment and Training Law (the Law). The claimant exercised her right of appeal to the courts under section 42 of the same law. The case was then remanded by the Boston Municipal Court for the taking of additional evidence.

The case was remanded by the Board to the Deputy Director in accordance with the court order and the case was returned to the Board of Review on September 24, 1999.

The Board has now reviewed the entire case to determine whether the Deputy Director's decision was founded on the evidence in the record and was free from any error of law affecting substantial rights.

The claimant's appeal is from the decision of the Deputy Director, dated January 12, 1999, which concluded that:

Under the provisions of Section 69(c) of the Law, waiver of recovery of an overpayment of benefits may be made to any individual who "is without fault and where, such recovery would defeat the purpose of benefits otherwise authorized or would be against equity and good conscience". (emphasis added).

A Notice of Overpayment was issued to the claimant on November 9, 1998 indicating the overpayment was not due to fault on the part of the claimant. Since it was determined that the claimant was without fault, it is necessary to examine whether the recovery of overpaid benefits would defeat the purpose of benefits otherwise authorized, or would be against equity and good conscience.

With regard to recovery being against equity and good conscience, the claimant used the benefits she received to pay ordinary and necessary living expenses. She did not do anything with the money which she would not have done had she not received the benefits, and she did not relinquish a valuable right or change her position, for the worse based upon her receipt of benefits. Recovery of the overpaid benefits would, therefore, [sic] not be against equity and good conscience.

With regard to recovery defeating the purpose of benefits otherwise authorized, several factors require discussion. First, the claimant has no dependents. Although the claimant's daughter resides with the claimant and her husband, the daughter is eighteen (18) years of age and does not attend school. The daughter cannot be concluded to be a legal dependent of the claimant. Second, the income of the claimant—by means of her husband's employment—exceeds the claimant's ordinary and necessary monthly living expenses, even including the cost of paying the daughter's automobile insurance.

Since the income of the claimant exceeds the cost of her ordinary and necessary living expenses, it cannot be concluded that recovery of the overpayment would defeat the purpose of benefits otherwise authorized.

Accordingly, the claimant is not eligible to have recovery of the overpayment of benefits waived.

The request for waiver of the overpaid benefits is denied.

The claimant shall be required to repay to the unemployment fund benefits in the amount of \$2,448.00. Since the claimant was without fault, no interest penalty shall apply.

Section 69(c) of Chapter 151A of the General Laws and 430 CMR 6.03 and 6.05(1) are pertinent and provide, in part, as follows:

Section 69(c). The commissioner may waive recovery of an overpayment made to any individual, who, in the judgment of the commissioner, is without fault and where, in the judgment of the commissioner such recovery would defeat the purpose of benefits otherwise authorized or would be against equity and good conscience. . .

430 CMR 6.03:

Definitions

The following words and phrases as used herein, shall have the following meanings, unless otherwise dearly [sic] indicated by the context of 430 CMR 6.00.

Against equity and good conscience means that recovery of an overpayment will be considered inequitable if an overpaid claimant, by reason of the overpayment, relinquished a valuable right or changed his or her position for the worse. In reaching such a decision, the overpaid claimant's financial circumstances are irrelevant. . .

Defeat the purposes of benefits otherwise authorized means that recovery of the overpayment would deprive the overpaid claimant, or individuals dependent on the claimant, of income required for ordinary and necessary living expenses. This depends upon whether the overpaid claimant or his dependents have income or financial resources sufficient for more than ordinary and necessary needs, or are dependent upon all current income for such needs. Ordinary and necessary living expenses include, but shall not be limited to:

- (a) fixed living expenses such as food and clothing, rent, mortgage payments, utilities, accident and health insurance, taxes, and work-related transportation expenses;
- (b) medical and hospitalization expenses;
- (c) expenses for the support of others for whom the individual is legally responsible;
- (d) other miscellaneous expenses which may reasonably be considered as part of an individual's necessary and ordinary living expenses.

Fault, as used in the phrase "without fault", applied only to the fault of the overpaid claimant. Fault on the part of the Department in making the overpayment does not relieve the overpaid claimant of liability for repayment if the claimant is not without fault. In determining whether an individual is at fault, the Commissioner or his authorized representative, will consider the nature and cause of the overpayment and the capacity of the particular claimant to recognize the error resulting in the overpayment. A claimant shall be at fault if the overpayment resulted from:

- (a) the individual furnishing information which he or she knew, or should have known, to be incorrect; or
- (b) failure to furnish information which he or she knew or should have known to be material; or
- (c) acceptance of a payment which he or she knew, or could have been expected to know, was incorrect.

The determination of what an overpaid claimant "should have known" or "could have been expected to know" shall be based upon the claimant's own individual circumstances.

430 CMR 6.05:

Waiver of Recovery of Overpayments

- (1) No overpayment shall be recovered when, in the judgment of the Commissioner or his authorized representative, the claimant is without fault on his part and where recovery of the overpayment would either defeat the purpose of benefits otherwise authorized or would be against equity and good conscience. Fault on the part of the Department in making the overpayment does not relieve the overpaid claimant from liability for repayment if such individual is not without fault.

The Deputy Director's representative held a hearing on January 5, 1999. The claimant was present. The Deputy Director's representative held a remand hearing on September 22, 1999, in accordance with the Court's Remand Order. The claimant appeared with counsel. Thereafter, the Deputy Director's representative submitted his final consolidated findings of fact as follows:

1. The claimant requested a hearing on a determination which denied a request for waiver of an established overpayment in the amount of \$2,448.00. The determination indicated that the overpayment was not due to fault on the part of the claimant.
2. The overpayment of benefits resulted when the claimant was disqualified from receiving benefits after a hearing on the merits of her separation from employment. The claimant did not appeal the decision of the review examiner.
3. A Notice of Overpayment (Erroneous Overpayment) was issued to the claimant on November 9, 1998. The claimant then filed a request for waiver of recovery of the established overpayment.
4. The claimant used the benefits received to pay monthly living expenses such as; food, rent, utilities and clothing. The claimant did not incur any financial obligation which she might not have incurred but for the receipt of such benefits. The claimant did not forego applying for any other type of benefit or medical insurance as a result of receiving such benefits.
5. The claimant is married. The combined, average gross monthly income of the claimant and her husband is \$1,343.00.
6. The claimant has an eighteen (18) year-old daughter who resides with the claimant. The daughter is not employed. The daughter will be nineteen (19) in November of 1999. The daughter began attending college on a full time basis in September of 1999. Between October of 1998 and September of 1999, the daughter was not enrolled in college.
7. The claimant and her husband own a 1987 Ford Taurus automobile, the value of which is not known. The daughter owns a 1989 Plymouth Sundance automobile, the value of which is not known.
8. At the time of the initial hearing in January of 1999, the claimant identified approximately \$854.00 in monthly expenses, as follows:

Rent	\$ 103.00
Utilities	95.00
Food	280.00
Vehicle insurance	316.00 (both cars)
Transportation costs (gas)	60.00.

9. At the remand hearing, the claimant identified the following expenses incurred each month by her and her husband which she had neglected to identify at the initial hearing:

Personal care expenses (hair cuts)	\$ 22.00
Union dues	30.00
Church offerings	65.00
Clothing and miscellaneous household items	91.00
Laundry	50.00

10. At the remand hearing, the following corrections were made to the monthly expenses identified by the claimant in January of 1999:

Food, groceries and toiletries	675.00
Utilities	100.00
Transportation costs (gas)	100.00

11. Based upon the additional and corrected monthly expenses of the claimant and her husband enumerated above, the claimant incurred the following monthly expenses as of January of 1999:

Rent	\$ 103.00
Utilities	100.00
Food, groceries, toiletries	675.00
Car insurance	316.00
Transportation costs (gas)	100.00
Personal care expenses	22.00
Union dues	30.00
Church offerings	65.00
Clothing and miscellaneous household items	91.00
Laundry expenses	50.00

TOTAL MONTHLY EXPENSES—CLAIMANT AND HUSBAND—JANUARY OF 1999 -- \$ 1,552.00.

12. The claimant continued to incur these monthly expenses through August of 1999. In September of 1999, the monthly rent of the claimant increased to \$183.00.
13. Between January and September of 1999, the daughter's vehicle required numerous repairs. The total repair cost during this period of time was approximately \$632.00, or approximately \$70.00 per month. The claimant's daughter also incurs transportation costs—gas—of approximately \$60.00 per month.
14. The claimant's daughter incurs approximately \$93.00 per month in personal care expenses, including hair cuts and acne medication.

After reviewing the record, the Board adopts the consolidated findings of fact made by the Deputy Director's representative as being supported by substantial evidence. The Board concludes as follows:

In order to be entitled to a waiver of recovery of an overpayment, the overpayment must not be due to fault on the claimant's part and the claimant must establish that recovery would either defeat the purpose of benefits otherwise authorized, or be against equity and good conscience within the meaning of Section 69(c) of the Law.

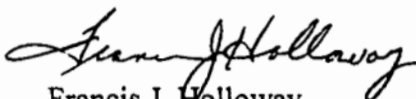
The claimant did not establish that recovery would be against equity and good conscience. She used the benefits for monthly living expenses and did not relinquish a valuable right or change her position for the worse due to receipt of them.

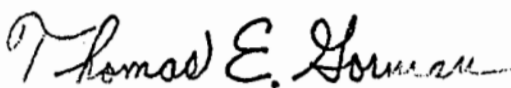
However, the claimant is without fault. The overpayment resulted from a decision following a hearing that disqualified her from receiving benefits after they were paid. Also, the claimant has established that recovery would defeat the purpose of benefits otherwise authorized. The total of the regular monthly, ordinary and necessary living expenses of the claimant and her husband exceed their monthly income. Recovery of the overpayment would deprive them of income needed for those expenses.


The Board, therefore, concludes that since the claimant is without fault and recovery would defeat the purpose of benefits otherwise authorized within the meaning of Section 69(c) of the Law, and 430 CMR 6.05, the claimant is entitled to a waiver of the overpayment.

The decision of the Deputy Director is modified. The claimant's request for a waiver is allowed.

BOSTON, MASSACHUSETTS
DATE OF MAILING - **NOV 09 1999**


Francis J. Holloway
Chairman


Thomas E. Gorman
Member

APPELLANT I.D. # 

ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS DISTRICT COURT
(See Section 42, Chapter 151A, General Laws Enclosed)

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LAST DAY - **DEC 09 1999**